

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON

BOBBY EUGENE RODDY,

Petitioner

v.

Case No. 2:14-cv-13317

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES, et al.,**

Respondents.

PROPOSED FINDINGS AND RECOMMENDATION

On March 26, 2014, the petitioner, Bobby Eugene Roddy, who is presently incarcerated at the Huttonsville Correctional Center in Huttonsville, West Virginia, filed a Petition for a Writ of Mandamus (ECF No. 1) and an Application to Proceed Without Prepayment of Fees and Costs (ECF No. 2). This matter is assigned to the Honorable Joseph R. Goodwin, United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

On May 5, 2014, the undersigned denied the petitioner's Application to Proceed Without Prepayment of Fees and Costs, pursuant to 28 U.S.C. § 1915(g), on the basis that the petitioner, while incarcerated, has had at least three previous cases or appeals dismissed as frivolous, malicious or for failure to state a claim upon which relief can be granted, and has not demonstrated that he is in imminent danger of serious physical injury (the "three strikes" rule). The petitioner was ordered to pay the full \$400 filing fee by June 5, 2014, and he was further advised that the failure to pay the filing fee by

that date would result in the undersigned's recommendation that the presiding District Judge dismiss this case.

As of today's date, the petitioner has not paid the \$400 filing fee and, in fact, has taken no action with regard to this matter. Accordingly, the undersigned proposes that the presiding District Judge **FIND** that the petitioner has failed to prosecute this civil action. It is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

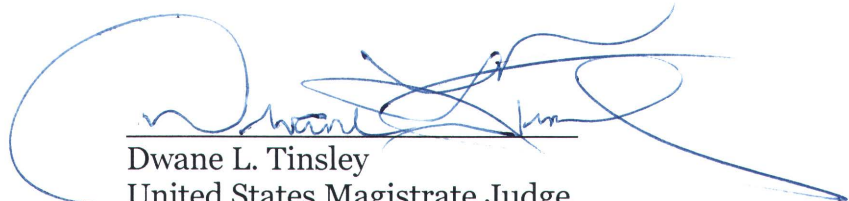
The petitioner is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(C), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the petitioner shall have fourteen days (filing of objections) and then three days (service/mailling), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge

Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the petitioner.

July 14, 2014



Dwane L. Tinsley
United States Magistrate Judge